



**Testimony
Before the
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
United States House of Representatives**

**“Continuing Ethics and Management
Concerns at the National Institutes of
Health and the Public Health Service
Commissioned Corps”**

Statement of

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**For Release on Delivery
Expected at 1:00 p.m.
Wednesday, September 13, 2006**

Introduction

Chairman Whitfield and Members of the Subcommittee, thank you for inviting me to testify at today's hearing on management and disciplinary procedures of the Public Health Service Commissioned Corps.

My name is John Agwunobi, and I am the Assistant Secretary for Health with the U.S. Department of Health and Human Services (HHS). As the Assistant Secretary for Health (ASH), I serve as the Secretary's primary advisor on matters involving the nation's public health and oversee the U.S. Public Health Service (PHS) for the Secretary. The PHS is comprised of agency divisions of HHS and the Commissioned Corps, a uniformed service of more than 6,000 active duty health professionals who serve at HHS and other federal agencies, including the Bureau of Prisons, the Department of Homeland Security, and the U.S. Coast Guard. The mission of the Commissioned Corps is: "Protect, promote, and advance the health and safety of the Nation." I am the highest ranking member of the Commissioned Corps; I am a Regular Corps officer and hold the rank of Admiral.

The Public Health Service

The origins of the Public Health Service (PHS), one of the seven uniformed services of the United States, may be traced to the passage of an act in 1798 that provided for the care and relief of sick and injured merchant seamen. In the 1870s, the loose network of locally controlled hospitals was reorganized into a centrally controlled Marine Hospital Service and the position of Supervising Surgeon, later becoming the Surgeon General of the United States, was created to administer the Service. The first Supervising Surgeon, Dr. John Maynard Woodworth, adopted a military model for his medical staff and created a cadre of mobile, career service physicians who could be assigned to areas of need. The uniformed services component of the Marine Hospital Service was formalized as the Commissioned Corps by legislation enacted by Congress in 1889. At first open only to physicians, over the course of the twentieth century, the Corps expanded to include dentists, dietitians, engineers, environmental health officers, health service officers, nurses, pharmacists, scientists, therapists, and veterinarians.

The scope of activities of the Marine Hospital Service also began to expand well beyond the care of merchant seamen in the closing decades of the nineteenth century, beginning with the control of infectious disease. As immigration increased dramatically in the late nineteenth century, the Marine Hospital Service was assigned the responsibility for the medical inspection of arriving immigrants at sites such as Ellis Island in New York. Because of the broadening responsibilities of the Service, its name was changed in 1912 to the Public Health Service. The Service continued to expand its public health activities as the Nation entered the twentieth century, with the Commissioned Corps leading the way. As the century progressed, PHS Commissioned Corps officers served their country by controlling the spread of contagious diseases such as yellow fever and smallpox (eventually assisting in the eradication of this disease from the world), conducting important biomedical research, regulating the food

and drug supply, providing health care to underserved populations, supplying medical assistance in the aftermath of disasters, and in numerous other ways.

As America's uniformed service of public health professionals, the Commissioned Corps achieves its mission to, "Protect, promote, and advance the health and safety of the Nation," through rapid and effective response to public health needs, leadership and excellence in public health practices, and the advancement of public health science. The Corps today is a specialized career system designed to attract, develop, and retain health professionals who may be assigned to Federal, State or local agencies or international organizations. The PHS, with the Commissioned Corps at its center, has grown from a small collection of marine hospitals to one of the most significant public health programs in the world. In doing so, the tradition of a long and successful partnership has evolved with the agencies where officers are employed. Corps members have served honorably and been at the forefront of many of the advances in public health over this nation's history.

Disciplinary and Administrative Actions

I have been invited to discuss with the Subcommittee the subject of disciplinary and administrative actions that may be taken against Corps officers; and the requirements and procedures applicable to the termination of an officer's commission for misconduct.

Corps officers are expected to uphold the highest standards of ethical behavior, both in their official roles and in their personal conduct. Commissioned Corps officers are on duty 24 hours a day, seven days a week, similar to our sister Services. The Corps takes seriously allegations of illegal infractions or other wrongdoing that brings discredit and dishonor to the Corps and the Department. We believe the Corps should strive for excellence of character and excellence in performance of duty, and we expect nothing less. When a determination is made that an officer has engaged in misconduct, he/she is subject to disciplinary action.

As a preliminary matter, I note that Commissioned Officers in the PHS and the National Oceanic and Atmospheric Administration (NOAA) are not generally under the purview of the Uniformed Code of Military Justice (UCMJ). Under the UCMJ jurisdictional statute, 10 U.S.C § 802, PHS and NOAA officers are subject to the UCMJ only when they are assigned to and serving with the armed forces.

If this jurisdictional prerequisite is not satisfied, cases of alleged misconduct involving individual Corps officers are solely handled in accordance with Commissioned Corps policies, as set forth in published Corps issuances. If there are potential criminal issues involved, these must be referred to the HHS Office of the Inspector General (OIG), which will coordinate with the Department of Justice for purposes of law enforcement investigation and prosecution. Non-criminal misconduct may be investigated by the agency operating division or by the Corps, depending on the situation.

Generally speaking, under Corps policy issuances, there are two broad categories of disciplinary administrative action available for uses in cases involving PHS Commissioned Corps officers: those actions not requiring a hearing – which include only a Letter of Reproval and a Letter of Reprimand – and those actions requiring a hearing – that is, all other administrative disciplinary actions up to and including termination of an officer's commission. The nature of the hearing requirement may differ depending on the officer's status (probationary vs. non-probationary, Reserve Corps vs. Regular Corps, etc.), as I will more fully describe in a moment. Moreover, involuntary termination of an officer's commission results in the loss of all benefits otherwise associated with the officer's uniformed services status.

How does the Corps define officer misconduct? Misconduct by a Regular or Reserve Corps officer includes violation of the HHS Standards of Conduct Regulations or of any other Federal regulation, law, or official Government policy. Such misconduct by an officer constitutes grounds for disciplinary or administrative action.

Some examples of officer misconduct include, but are not necessarily limited to:

- Disobedience or negligence in obeying lawful orders of an official superior;
- Absence from his/her assigned place of duty without authorized leave;
- Unauthorized use or consumption of controlled substances or alcohol while on duty, being under the influence of such substances or alcohol while on duty, or illegally possessing, transferring, or ingesting controlled substances at any time;
- Abusive treatment of subordinate officers, employees, patients or program beneficiaries, or of members of the public in their dealings with the Government;
- Engaging in action or behavior of a dishonorable nature which reflects discredit upon the officer and/or PHS;
- Submission of false information in an application for appointment or in any other official document;
- Failure to observe generally accepted rules of conduct and the specific provisions of law and Standards of Conduct regulations;
- Failure to comply with the Office of Government Ethics (OGE) regulations, Departmental supplemental and any other applicable standards of ethical conduct or regulations;
- Failure to exercise informed judgment to avoid misconduct or conflict of interest;
- Failure to consult supervisors or the Agency or Program's Ethics Officer, when in doubt about any provision of regulations; or

- Conviction of a felony.

Typically, administrative and disciplinary cases occurring within the Corps involve marginal or substandard performance, periods of being Absent Without Leave (AWOL), and cases of minor misconduct. The actual number of disciplinary cases is less than 1 percent of the Corps' active duty strength. In the past two years, there were approximately 100 disciplinary actions or pending actions that involved a total of 82 officers.

The Corps has a variety of administrative and disciplinary actions that can be initiated to address officers who engage in misconduct. The decision as to which type of administrative or disciplinary action to be applied is based upon the nature of the infraction and the status of the officer. Lesser offenses may result in a Letter of Reproval, an administrative action generally taken by a supervisor, which does not become part of an officer's personnel folder. More serious offenses can lead to the termination of an officer's commission based on the recommendation of a Board of Inquiry or an Involuntary Termination Board. If a determination is made that an officer's commission should be terminated, then the status of the officer determines what mechanism to be used and the level of due process that must be afforded to the officer in carrying out the action. For example, an officer who is on probation during their first three years on active duty may be summarily terminated upon 30 days notice with an opportunity to provide a written statement to the Director, Office of Commissioned Corps Operations. However, a Regular Corps officer or an officer who is eligible for retirement is afforded an opportunity to appear at a Board and present witnesses.

As a practical matter, disciplinary and administrative actions are enacted or recommended at the lowest level of the supervisory and administrative chain. Through delegation, the HHS Operating and Staff Division Heads, regional offices, the Surgeon General and Deputy Surgeon General, or the Director, Office of Commissioned Corps Operations (OCCO) have the authority to issue a letter of reproof or a letter of reprimand and to make recommendations to the Commissioned Corps regarding more serious disciplinary actions.

To summarize, the disciplinary and administrative actions that may be taken against an officer may be grouped into two classifications, those actions not requiring Board review and recommendation and those disciplinary actions that require board review and recommendation. It is important to note, however, that even in cases that do not require Board review, the agency to which the officer is assigned works in consultation with the Commissioned Corps in developing a reasonable plan of disciplinary action.

Actions not requiring board review and recommendation are the following:

- A Letter of Reproval, which is generally issued by the officer's line supervisor. The letter is retained in the officer's duty station personnel file and does not become part of the officer's official personnel folder (OPF).

- A Letter of Reprimand, which is generally issued by the line supervisor with the concurrence of the officer's administrative chain of command. This letter becomes part of the officer's OPF for a period of two years. While a Letter of Reprimand is within the officer's OPF, he/she is not eligible for promotion, deployment, or to receive a PHS award.
- Suspension from Duty is an administrative action recommended by the line supervisor with concurrence of the administrative chain of command. An officer may be placed in a non-duty with pay status pending resolution of disciplinary or administrative matters if such action is believed to be in the best interest of the Government.
- Summary Termination is an action where the Corps terminates an officer's commission without the review and recommendation of a board. Such action can be taken for officers who are AWOL for 30 or more consecutive days or those officers found guilty by a civil authority of one or more criminal offenses and having been sentenced to confinement for a period in excess of 30 days with or without suspension of probation. In addition, the commission of a Reserve Corps officer may be terminated during the first three years of his/her current tour of active duty – normally for substandard performance or misconduct.

The Commissioned Corps also has disciplinary actions that require board review and recommendation; they are the following:

- Temporary Promotion Review Board (TPRB). This Board is appointed and convened by the Surgeon General to make recommendations about whether an officer should retain a temporary promotion based upon evidence that: an officer's performance has deteriorated to an unsatisfactory level; an officer has engaged in misconduct; an officer is functioning at more than one grade below his/her temporary grade; an officer has failed to respond to progressive discipline; or an officer has failed to meet or maintain readiness standards, licensure requirements, and/or any other requirements set by the PHS Commissioned Corps. The ASH has the authority to revoke the temporary promotion of Regular and Reserve Corps officers based on a Board recommendation.
- Involuntary Termination Board for Reserve Corps Officers (ITB). Except in the case of summary terminations, requests for involuntary termination of Reserve Corps officers are reviewed by an Involuntary Termination Board (ITB). An ITB may be convened for misconduct, substandard performance, and/or no suitable assignment. The ASH has the authority to terminate a Reserve Corps officer's commission without the consent of the officer based on the recommendation of the Board.

- Involuntary Retirement Board (IRB). An officer may be referred to an IRB after 19 years of creditable service by the Director, OCCO, based upon the recommendation of the OPDIV/StaffDIV, Program Head or his/her designee to which the officer is assigned. The grounds to refer an officer to an IRB include, but are not limited to, substandard performance, conduct issues, falsification of official documents, or no suitable assignment. The IRB's findings and recommendations, along with all documentation, are forwarded to the Surgeon General for approval or disapproval. The decision of the Surgeon General is based upon the IRB's findings and recommendations, and any other relevant information in the record. A commissioned officer may be retired without the officer's consent following the completion of 20 years of active service.
- A Board of Inquiry (BOI) may be convened when an officer is charged by his/her superior or by any responsible person or persons with conduct constituting grounds for disciplinary action. Upon a finding of misconduct, a BOI may recommend the following actions: termination of commission and/or reduction in rank/grade. When a BOI recommends that an officer's commission be terminated and the ASH concurs, the ASH will then make a final decision as to the characterization of service based on the board's recommendation, e.g., honorable, general (under honorable conditions), or other than honorable.

To explain a little more fully, a Board of Inquiry consists of at least three PHS commissioned officers, who are Commander or Captain in rank. A PHS representative(s), one or more PHS commissioned officers, is appointed to prepare the statement of charges and specifications against the officer and to act in the interest of the Government before the Board. The hearing is conducted by a Presiding Officer and the proceedings are not limited by formal rules of evidence, but do require reasonable standards of competency, relevancy, and materiality. All testimony before the BOI is given under oath or affirmation. When the BOI has completed its deliberations, its recommendations are forwarded to the ASH for final decision making.

The officer who is being charged does have the right to 30 days advance written notice, the opportunity to appear in person, with or without counsel, before the Board, and the opportunity to present witnesses before the BOI.

Particularly for the Board of Inquiry, when allegations brought forward against an officer include possible violations of the United States criminal code, the law requires the matter to be referred to the OIG. In such cases, we do not conduct any further proceedings, including any investigations, without the prior express concurrence of an authorized representative of OIG. We proceed only when it is determined that the Board of Inquiry will not pose any risk to criminal proceedings.

These are the disciplinary actions that can be taken by the Commissioned Corps in cases of misconduct by an officer. They are based in the policies and procedures that currently govern our Service. As you are aware, HHS Secretary Leavitt is directing a major transformation of the Corps. As part of this transformation, we are examining our

policies and administrative systems to ensure they are robust and rigorous. We seek to ensure that our disciplinary approaches and procedures match those serious ethical questions that face us today and in the future.

In conclusion, I fully understand the gravity of the issues being explored by the Subcommittee and want to thank you again for inviting me to testify. I am ready to answer questions posed by the Subcommittee.